

Editor's note: appealed - sub nom. Rose May Foley v. Watt, rev'd and remanded, Civ.No. 82-1642 (D.D.C. Feb. 3, 1983); also appealed - aff'd, sub nom. Geosearch, Inc. v. Watt, Civ.No. 82-0240 (D. Wyo.), aff'd in part, reversed in part, No. 83-1407 (10th Cir. Nov. 7, 1983), 721 F.2d 694; cert denied 466 US 972 (May 14, 1984)

ERVIN STAACKE ET AL.

IBLA 80-798

80-800

Decided March 16, 1982

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, sustaining in part protests against the issuance of oil and gas leases W 58979, W 65461, and W 57977, dismissing bona fide purchasers from the proceedings, canceling 25 percent record title interest in W 57977, declaring overriding royalties null and void, and rejecting drawing entry cards drawn with second and third priority.

Affirmed in part; reversed in part and remanded.

1. Oil and Gas Leases: Applications: Sole Party in Interest

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Estoppel -- Oil and Gas Leases: Applications: Generally

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977),

for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

3. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchaser

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

4. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchaser -- Words and Phrases

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

5. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchaser

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

6. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Overriding Royalties

An overriding royalty interest retained by a lessee after he has assigned the

lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

APPEARANCES: David B. Kern, Esq., Milwaukee, Wisconsin, for appellants Ervin Staacke, Rose May Foley, and Resource Service Company; Melvin Leslie, Esq., Salt Lake City, Utah, for Robert G. Scholl, Richard J. Doerr, and Geosearch, Inc.; Harold J. Baer, Jr., Esq., Denver, Colorado, for the Bureau of Land Management, and Robert G. Pruitt, Jr., Esq., for Elf Aquitaine, Inc.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

This appeal represents the second time that the circumstances surrounding the issuance of oil and gas leases W 57977 and W 58979 are disputed before the Board. In the initial case, Geosearch, Inc., 41 IBLA 291 (1979), appellant Geosearch argued that these leases, among others, had been issued to offerors that were improperly given first priority. Geosearch, as purchaser of such interests in these leases as were held by second and third priority offerors, protested the validity of these leases, arguing that the Resource Service Company (RSC) had an undisclosed interest in each offer afforded first priority. Each first priority offeror had entered into a service agreement with RSC, a leasing service. The Wyoming State Office of the Bureau of Land Management (BLM) had denied Geosearch's protests, noting that, since all the leases had issued (except one lease not relevant here) and most had been assigned, "we do not believe that the number 2 drawees of these simultaneous oil and gas drawings have an interest to assign to Geosearch, Inc." Geosearch, Inc., supra at 292. BLM, in this original decision, did not determine whether the underlying offers in the leases were actually defective. Geosearch appealed.

The Board noted in Geosearch, Inc., supra, that because BLM had neither returned the drawing entry cards of the second and third priority offerors nor notified the offerors that their offers were rejected, the offers remained viable. The Board agreed that any bona fide purchasers would be protected under 30 U.S.C. § 184(h)(2) (1976). The Board also noted the possibility that some assignees might not be bona fide purchasers. Most assignees had not even asserted bona fide purchaser status. Accordingly, the Board vacated BLM's original decision and instructed the State Office to join the assignees to the protest proceeding and to consider whether the underlying offers were defective and, if so, to ascertain the bona fides of any assignee. The Board indicated also that where an assignee asserted bona fide purchaser status, Geosearch would have the burden of establishing the contrary by prima facie evidence.

On remand, BLM found, in two decisions, one dated July 1, 1980, and the other July 9, 1980, that Ervin Staacke, the first priority drawee for parcel WY-134, listed March 21, 1977, and Rose May Foley, first priority drawee for parcel WY-16, listed December 20, 1976, filed their respective simultaneous oil and gas lease offers pursuant to agreements which gave RSC an interest (as "interest" is defined in 43 CFR 3100.0-5(b)) in each offer. The applicable regulation, 43 CFR 3102.7 (1979), required that such interests must be disclosed. See Frederick W. Lowey, 40 IBLA 381 (1979), and Lola I. Doe, 31 IBLA 394 (1977). 1/ Under these agreements, RSC had an exclusive right to participate in the proceeds from any sale or assignment of the lease for a 5-year period after lease issuance. 2/ BLM held also that a purported disclaimer of interest that RSC submitted to BLM on January 13, 1977, was ineffective to avoid the regulatory violations. Once BLM determined that the underlying offers had been defective, BLM examined the status of the respective assignees.

In its July 1, 1980, decision, BLM noted that lease W 58979 was issued May 10, 1977, effective June 1, 1977. An assignment to Monsanto Company, dated May 16, 1977, and effective June 1, 1977, reserving a 5 percent overriding royalty in Staacke was filed with BLM on May 31, 1977. BLM approved the assignment on June 20, 1977. Monsanto had negotiated the assignment in April 1977, before the lease issued. 3/ An assignment to RSC of a percentage of Staacke's overriding royalty was filed with BLM on March 13, 1978.

BLM considered Rose May Foley's offer in its decision dated July 9, 1980. Lease W 57977 issued to Foley, the first drawee, February 10, 1977, effective March 1, 1977. The first drawee assigned full record title to Diamond Shamrock Corporation (Diamond) reserving 5 percent overriding royalty. This assignment was filed February 28, 1977, and approved April 21, 1977, effective March 1, 1970. On March 15, subsequent to the filing of the assignment but before its approval, one Eugene R. Fischer filed a protest to lease issuance, alleging that Foley, as a client of RSC, had violated the prohibition against multiple filings. After the Fischer protest was filed, RSC submitted the letter of disclaimer as well as a sample of the sales agreement which it had utilized with Foley. Fischer's protest was dismissed on April 12, 1977, and no appeal was taken therefrom.

In the interim, Diamond had assigned 25 percent each of the total record title to Aquitaine Oil Corporation (later Elf Aquitaine, Inc., or Elf) and Getty Oil Company (Getty). This second assignment was filed March 24, 1977, approved April 21, 1977, effective April 1, 1977. On November 9, 1977, the first drawee, Foley, filed an assignment of a graduated percentage of the overriding royalty to RSC. On October 3, 1978, Geosearch filed the protest which was considered by this Board in Geosearch, supra. _

1/ The Board's decision in Lowey, supra, was affirmed in Lowey v. Watt, 517 F. Supp 137 (D.D.C. 1981).

2/ Lease W 58979 was segregated on Sept. 21, 1978, because a portion was committed to a unit plan of development. The uncommitted portion was designated W 65461. On Nov. 1, 1979, the committed portion, W 58979, was dropped from the unit.

3/ While the decision did not so note, consideration for the assignment was paid on Apr. 18, 1977.

In its decisions on remand, BLM held that the assignees should be dismissed from the proceedings, noting that the assignments to Monsanto by Staacke, Diamond by Foley, Getty by Diamond, predated the Board's decision in Lola I. Doe, *supra*. However, BLM noted that Elf had not responded to the show cause order and therefore took the Geosearch allegations as confessed. ^{4/} BLM stated that Geosearch had not alleged any facts which would impugn the bona fide purchaser status of those assignees who responded to the show cause orders, and, accordingly, BLM declined to order fact finding hearings and dismissed Diamond, Getty, Monsanto (and all subsequent assignees) from the proceedings and declared the overriding royalties of Foley, Staacke, and RSC null and void ab initio. It also rejected the offers of the unsuccessful drawees. Finally, BLM canceled Elf's 25 percent record title interest in W 57977 pursuant to section 31(b) of the Mineral Lands Leasing Act, as amended, 30 U.S.C. 188(b) (1976), and 43 CFR 3108.2-3 (1975). ^{5/}

[1, 2] Staacke, Foley, RSC, Geosearch, Elf and the second drawees, Scholl, and Doerr have all appealed to the Board. While RSC and the first drawees still dispute the determination that the leasing service agreements gave RSC an "interest" in the first drawees' offers, as this Board held in Lola I. Doe, *supra*, and Sidney Schreter, 32 IBLA 148 (1977), their appeals focus on what they term the retrospective application of the Doe decision. RSC and the first drawees refer to the January 13, 1977, waiver/disclaimer as evidence of their good faith.

RSC's retrospective effect argument has been considered and rejected in a number of cases. See, e.g., Inexco Oil Co., 54 IBLA 260 (1981); Home Petroleum Corp., 54 IBLA 194, 204, 88 I.D. 479, 484, *aff'd*, Geosearch v. Watt, Civ. No. C81-0208 (D. Wyo. filed Aug. 7, 1981); D. R. Weedon, Jr., 51 IBLA 378 (1980), *appeal dismissed*, Weedon v. Watt, Civ. No. 81-749 (D.D.C. Oct. 9, 1981). As we noted in D. R. Weedon, Jr., *supra*, neither RSC nor its clients had the status of "innocent offerors" inasmuch as both had participated in the creation of the illegal interest. We also pointed out that:

No one who held or granted the exclusive right to participate in a precise share of any proceeds from the sale or assignment of the lease and from any proceeds derived from retained overriding royalties could possibly entertain any serious doubt that such a right constituted an "interest" within the context of this regulation.

* * * To hold that, upon a finding of violation, the Department must forego remedial action until a similar violation is discovered in the future would be to hold that a

^{4/} BLM noted that subsequent unapproved assignments to the Michigan Wisconsin Pipeline Company and the Northern Natural Gas Company would be in good faith since their assignments had been filed with BLM before Aug. 21, 1979, when Staacke's service agreement with RSC was filed. See n.7, *infra*. ^{5/} The canceled interest was to be put up for competitive bid pursuant to section 27(h)(2) of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 184(h)(2) (1976).

person may violate the regulation with impunity until discovered, but not thereafter.

Id. at 384. We adhere to our prior holding.

We have also noted in many cases that the purported waiver/disclaimer was ineffective as it was a unilateral action unsupported by consideration and was not communicated to the other parties. See, e.g., Frederick W. Lowey, *supra*; Alfred L. Easterday, 34 IBLA 195 (1978). Both Foley and Staacke failed to disclose the "interest" of RSC in their offers as required by 43 CFR 3102.7, and must be rejected for that reason alone. In addition, to the extent that other clients of RSC filed in the same drawing under the same arrangements, RSC thereby increased its chances of success in those drawings in violation of 43 CFR 3112.5-2, and, therefore, all such offers should be rejected. D. E. Weedon, Jr., *supra*.

Geosearch, Scholl, and Doerr appeal from BLM's decision on separate grounds. First, they object to the findings that any assignees were bona fide purchasers. Second, they argue that such interests as are canceled should not be put up for sale by competitive bid but rather should be issued to them as the next qualified offerors.

The major focus of Geosearch's appeal is that the assignees could not have been bona fide purchasers, since, according to Geosearch, they knew or should have known that RSC had prohibited interests in the first drawn offers.

[3, 4] As this Board has noted, the interest in a Federal oil and gas lease held by a bona fide purchaser is not subject to cancellation even though the lease offer filed by a predecessor in title was defective and the lease was subject to cancellation while title was held by the predecessor. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2. A bona fide purchaser must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). Assignees who seek to qualify as bona fide purchasers are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment. Winkler v. Andrus, *supra* at 713; O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977).

Geosearch alleges that the assignees had actual or constructive knowledge of the service agreement between the first drawn offerors and RSC which created undisclosed interests in the lease offers and, therefore, that the assignees cannot qualify as bona fide purchasers. Geosearch contends that previous dealings with RSC and with other clients of RSC should have alerted the assignees to a pattern of operations which, in turn, should have alerted them to the probability of agreements between RSC and the first drawn offerors that would violate Federal oil and gas leasing regulations. We do not agree.

As we have pointed out in the past, while the general rule is that the relevant date to determine bona fides is the date that the consideration for the assignment was paid, Winkler v. Andrus, 614 F.2d at 712, citing 77 Am. Jur. 2d, Vendor & Purchaser § 706 (1975), the Tenth Circuit stated in Winkler that the critical time was instead when the agreement was formed. Insofar as

Staacke's assignment to Monsanto is concerned, it is immaterial whether the critical time is regarded as the date the parties agreed to the assignment or the date that the consideration was paid.

At the time that the assignments to Monsanto were made, nothing in the case file would have put Monsanto on notice that there were defects in the first drawn offers. The RSC agreement was not then part of the case record. There were no pending protests. We have noted in the past that the mere fact that an offeror was a client of RSC did not establish that the arrangement which we found violative of the regulations in Lola I. Doe, supra, had been entered into in every case. See, e.g., Wilbur G. Desens, 54 IBLA 271, 278 (1981); Inexco Oil Co., supra at 267. In any event, we would point out that the assignment had been entered into and approved prior to the Board's decision in Doe, supra. We find, therefore, that Monsanto was a bona fide purchaser for value. Geosearch's suppositions and arguments to the contrary are insufficient to establish, prima facie, that such was not the case. See Geosearch, Inc. v. Andrus, 508 F. Supp. 839, 846 (D. Wyo. 1981).

Insofar as Foley's assignment to Diamond is concerned, however, the question raised by Winkler as to the correct date for the ascertainment of bona fide purchasers' status may well determine whether Diamond is, indeed, entitled to bona fide purchaser protection. As we noted above, the assignment from Foley to Diamond was dated February 12, 1977, and filed with BLM on February 28. On March 15, 1977, Eugene Fischer filed his protest, expressly alleging that the RSC arrangement constituted a violation of the prohibition against multiple filings. In response to this protest, attorneys for RSC submitted a sample copy of the disclaimer/waiver and a copy of a sales agreement which RSC desired to sign after the lease drawing. It was pointed out in the disclaimer letter that "the Sales Agreement spells out the same terms as provided in the Service Agreement." These documents were received by BLM on April 8, 1977. Subsequently, on April 12, 1977, the Wyoming State Office dismissed Fischer's protest. On April 21, 1977, the assignment to Diamond was approved effective March 1, 1977.

We would point out that while this case is similar, in many respects, to the fact situation which arose in Wilbur G. Desens, supra, it is different in two important respects. First, in Desens, the assignment was filed long after the protest had been adjudicated. Herein, the assignment was actually filed before the protest. More critical, however, is the fact that, in Desens, the protestant had argued that the address on the DEC was not Desens' address and had questioned whether Desens was a real person. As our decision noted, "Mayer's protest did not mention the flaw in Desens' DEC, and so did not serve to put Gulf on notice of this defect." Id. at 278. In the instant case, Fischer's protest not only focused in on the fatal flaw of the RSC arrangement, but the RSC response consisted of an exact duplicate of the sales agreement which RSC had entered into with Foley, clearly setting forth the features we found objectionable in Doe.

The problem which we face herein is that while Diamond has alleged it paid \$150,000 for the lease, it has never stated when it tendered the consideration. It may well be that such consideration was paid when the assignment was filed with BLM. But it is also possible that the consideration was not tendered until after the assignment was approved. It is our view that the

information placed in the record by RSC's attorney on April 8, 1977, was sufficient to put individuals on notice of the deficiencies of Foley's offer had they actual knowledge thereof. Thus, unless we determine that the date that the agreement is entered into is controlling, it will be necessary to remand this case to BLM to ascertain when the consideration for the assignment was tendered.

We have noted that the Tenth Circuit held in Winkler that it believed that the critical date was that of the assignment itself. While we believe that the Court in Winkler may have put more store on the language of Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 655-56 (1966), than was justified, 6/ at least insofar as the instant cases are concerned, we believe that it provides a sufficient predicate to find Diamond a bona fide purchaser regardless of when consideration was tendered.

At the time Foley made her assignment to Diamond there was nothing in the record which could fairly be said to have put Diamond on notice of any deficiency in Foley's offer. The same was true as of the date of filing of the assignment. Moreover, inasmuch as BLM had already issued the lease to Foley, in the absence of a clear showing from the lease record that BLM's action was in error, Diamond had a right to rely on BLM's proper adjudication of offers to lease. It may be that an extraordinarily careful prospective assignee might frequently check the case file to ascertain what is transpiring, until the assignment is approved. However, as the Tenth Circuit noted in O'Kane v. Walker, supra, the standard is whether an individual "exercised the ordinary care expected of a purchaser of a federal oil and gas lease." Id. at 212 (emphasis added).

In this regard, not only was there nothing in the record at the time the assignment was submitted to BLM that would have placed Diamond on notice, there is no indication that Diamond was ever informed of the protest of Fischer. Indeed, no document filed by any party to the protest was served on Diamond prior to the approval of the assignment. Thus, we cannot find (even assuming that the consideration was not paid until after the approval of the assignment) either actual or constructive knowledge such as would defeat the bona fide purchaser status of Diamond.

[5] Getty and Elf acquired their 25 percent interests in W 57977 on the same date. Because BLM determined that Elf failed to respond to the show cause order, Elf's interest was cancelled although Getty's was not. Elf asserts, however, that by referring to "its co-leasehold owners," Diamond answered for all owners in its response to the show cause order. However, since both Getty and Elf were remote purchasers it is irrelevant whether they knew or should have known of the defect in Foley's offer. As we stated in Home Petroleum Corp., supra,

6/ The emphasis of the Court in the Southwestern Petroleum Corp. decision on the making of the assignment as the critical date was directed to an argument that, since the assignment had never been approved by BLM, the assignee could not qualify as a bona fide purchaser under 30 U.S.C. § 184(h) (1976). The question whether payment of consideration rather than signing of the assignment gave rise to the bona fide purchaser status was never examined by the Court.

It is a general rule that a remote purchaser of real estate whose purchase does not fulfil all the requisites for protection due a bona fide purchaser may nevertheless be accorded protection because of his purchase from one who is entitled thereto. The purpose of this rule is to prevent a stagnation of property and to protect the first purchaser who, being entitled to hold and enjoy, must be equally entitled to sell. Otherwise, a bona fide purchaser might be prevented from selling his property for full value. In other words, the vendee of the bona fide purchaser is not favored on his own account, but for the sake of him from whom he purchased. It is wholly immaterial of what nature the outstanding interest is, whether it is a lien or encumbrance, or a trust, or any other claim. [Footnotes omitted.]

Id. at 213, 88 I.D. at 489 (citing 77 Am. Jur. 2d, Vendor & Purchaser § 718 (1975)). Thus, since Getty and Elf purchased their 25 percent interests from Diamond, a bona fide purchaser, it is not necessary for them to show their own bona fides. Therefore, we find that BLM incorrectly canceled Elf's 25 percent interest in W 57977. 7/

[6] We disagree with BLM's holding that the retained overriding royalty interests were null and void ab initio and find instead, as discussed in Home Petroleum Corp., supra, that these interests were merely voidable. We hold that BLM properly canceled the overriding royalties retained by Staacke, Foley, and RSC, for the reasons set out in Wilbur G. Desens, supra at 279-80; Inexco Oil Co., supra at 269-70; Wayne E. DeBord, 50 IBLA 216 n.1, 87 I.D. 465 n.1 (1981) (appeal pending).

We must finally consider Geosearch's objection to the sale of retained interests which are canceled. Since the second drawn offers had not been rejected, they remained viable in case the first drawn offers were found defective. However, the bona fide purchasers are protected by the provisions of 30 U.S.C. § 184(h)(2) (1976). That provision also states:

If, in any such proceeding, an underlying lease, interest, option, or permit is canceled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, the underlying lease, interest, option, or permit shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, option, or permit is canceled or forfeited to the Government, the partial interests so canceled or forfeited shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations.

7/ Similarly, to the extent that Michigan Wisconsin Pipeline Company and Northern Natural Gas Company are remote purchasers from Monsanto of interests in W 58979, they will not have to establish their bona fides.

Therefore, the second drawn offers submitted by Scholl and Doerr must be rejected and the State Office action returning their drawing entry cards is affirmed. See Geosearch, Inc. v. Andrus, supra at 845; James Koch, 61 IBLA 235 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Wyoming State Office are affirmed in part, reversed in part, and remanded for further proceedings.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

